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COMMITTEE ON APPLICATIONS FOR REVIEW OF
ADMINISTRATIVE TRIBUNAL JUDGEMENTS
Thirty-ninth session
Applications Nos. 70, 71, 72, 73, 74,
75, 76, 77

ADMINISTRATIVE TRIBUNAL JUDGEMENTS NO. 531: HALLIN AGAINST THE UNITED NATIONS JOINT STAFF PENSION BOARD; NO. 530: SALINAS AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; NO. 539: BENTALEB AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; NO. 533: ARAIM AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; NO. 538: AL-ATRAQCHI AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; NO. 541: IBARRIA AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; NO. 545: FALLAH AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS

Report of the Committee

Rapporteur: Mr. Michael WOOD (United Kingdom of Great Britain and Northern Ireland)

INTRODUCTION

1. At its thirty-ninth session, the Committee on Applications for Review of Administrative Tribunal Judgements, established under article 11 of the statute of the Administrative Tribunal, considered the following applications:

(a) Application of Mr. Hallin for a review of Administrative Tribunal Judgement No. 531 - Hallin v. the United Nations Joint Staff Pension Board;

(b) Application of Mr. Salinas for a review of Administrative Tribunal Judgement No. 530 - Salinas v. the Secretary-General of the United Nations;

(c) Application of Mr. Bentaleb for a review of Administrative Tribunal Judgement No. 539 - Bentaleb v. the Secretary-General of the United Nations;

(d) Application of Mr. Araim for a review of Administrative Tribunal Judgement No. 533 - Araim v. the Secretary-General of the United Nations;

(e) Application of Mr. Al-Atraqchi for a review of Administrative Tribunal Judgement No. 538 - Al-Atraqchi v. the Secretary-General of the United Nations;

(f) Application of Mr. Ibarria for a review of Administrative Tribunal Judgement No. 541 - Ibarria v. the Secretary-General of the United Nations;

(g) Application of Ms. Fallah for a review of Administrative Tribunal Judgement No. 545 - Fallah v. the Secretary-General of the United Nations.

2. Meetings of the Committee were held on 30 March and 1, 2 and 9 April 1992.

I. COMPOSITION OF THE COMMITTEE AND ORGANIZATION OF THE SESSION

3. The Committee, under paragraph 4 of article 11 of the statute of the Administrative Tribunal, is composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly (forty-sixth session), namely, at this time: Australia, Belize, Botswana, China, Ecuador, France, Guinea, Honduras, Ireland, Italy, Libyan Arab Jamahiriya, Malaysia, Mozambique, Myanmar, Oman, Poland, Qatar, Russian Federation, Saint Lucia, Saudi Arabia, Thailand, Togo, Tunisia, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Zaire.

4. Mr. Pedro Comissario Afonso (Mozambique) and Mr. Michael Wood (United Kingdom), elected respectively as Chairman and as Rapporteur at the thirty-eighth session, continued to serve in those capacities at the thirty-ninth session.

II. THE APPLICATIONS BEFORE THE COMMITTEE AND THEIR CONSIDERATION

5. On 19 November 1992, the Secretary of the Committee received an application from Mr. Hallin requesting a review of Judgement No. 531 rendered by the United Nations Administrative Tribunal on 23 October 1991 in the case of Hallin against the United Nations Joint Staff Pension Board. In accordance with paragraph 1 of article III of the rules of procedure of the Committee,

the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 February 1992, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.214) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Administrative Tribunal (AT/DEC/531).

6. Written comments of the Respondent, submitted with respect to the application of Mr. Hallin in accordance with paragraph 1 of article V of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.215.

7. The Committee considered the application of Mr. Hallin at its closed meeting held on 1 April 1992.

8. In the light of article 48, paragraph (c), of the Regulations of the United Nations Joint Staff Pension Fund, during the discussion of the application of Mr. Hallin questions were raised as to whether the Committee had competence to consider his application, since it relates to the judgement rendered by the United Nations Administrative Tribunal in a case of the alleged non-observance of the aforementioned Regulations. Without taking a vote on the matter, the Committee proceeded to consider whether or not there was a substantial basis for the application of Mr. Hallin in respect of the ground set forth in article 11 of the statute of the United Nations Administrative Tribunal and referred to in the application. This ground is as follows:

> Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

9. The decision of the Committee with regard to this question was taken by vote.

10. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by a vote of 18 to 1 with 5 abstentions that there was not a substantial basis for the application on that ground.

11. In view of the Committee's negative response to the question which had been put to it in the application of Mr. Hallin, the Committee decided that there was not a substantial basis for the application under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 531 delivered by the United Nations Administrative Tribunal in the case of Hallin against the United Nations Joint Staff Pension Board.

12. On 28 November 1991, the Secretary of the Committee received an application from Mr. Salinas requesting a review of Judgement No. 530 rendered by the United Nations Administrative Tribunal on 23 October 1991 in the case of Salinas against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 February 1992, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.218) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Tribunal (AT/DEC/530).

13. Written comments of the Respondent, submitted with respect to the application of Mr. Salinas in accordance with paragraph 1 of article V of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.219.

14. The Committee considered the application of Mr. Salinas at its closed meeting held on 1 April 1992.

15. After members of the Committee had presented their views on the application of Mr. Salinas, they were invited to decide whether or not there was a substantial basis for the application in respect of the following three grounds set forth in article 11 of the statute of the United Nations Administrative Tribunal and referred to in the application:

1. Has the Tribunal exceeded its jurisdiction or competence?

2. Has the Tribunal failed to exercise jurisdiction vested in it?

3. Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

16. The decisions of the Committee with regard to these three questions were taken by vote.

17. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had exceeded its jurisdiction or competence, the Committee decided, by a vote of 21 to none with 3 abstentions, that there was not a substantial basis for the application on that ground.

18. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided by a vote of 21 to none with 3 abstentions that there was not a substantial basis for the application on that ground.

19. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by a vote of 20 to none with 4 abstentions that there was not a substantial basis for the application on that ground.

20. In view of the Committee's negative response to the questions which had been put to it in the application of Mr. Salinas, the Committee decided that there was not a substantial basis for the application under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 530 delivered by the United Nations Administrative Tribunal in the case of Salinas against the Secretary-General of the United Nations.

21. On 16 December 1991, the Secretary of the Committee received an application from Mr. Bentaleb requesting a review of Judgement No. 539 rendered by the United Nations Administrative Tribunal on 4 November 1991 in the case of Bentaleb against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 February 1992, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.220) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Tribunal (AT/DEC/539).

22. Written comments of the Respondent, submitted with respect to the application of Mr. Bentaleb in accordance with paragraph 1 of article V of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.221.

23. The Committee considered the application of Mr. Bentaleb at three closed meetings held on 1 and 2 April 1992.

24. After members of the Committee had presented their views on the application of Mr. Bentaleb, they were invited to decide whether or not there was a substantial basis for the application in respect of the following three grounds set forth in article 11 of the statute of the United Nations Administrative Tribunal and referred to in the application:

1. Has the Tribunal failed to exercise jurisdiction vested in it?

2. Has the Tribunal erred on a question of law relating to the provisions of the Charter of the United Nations?

3. Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

25. At the request of a member of the Committee, the decisions of the Committee with regard to these three questions were taken by a roll-call vote.

26. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided by a vote of 12 to 3 with 6 abstentions

that there was not a substantial basis for the application on that ground. The voting was as follows:

In favour: Botswana, Tunisia, United Republic of Tanzania

Against: Australia, France, Ireland, Italy, Mozambique, Myanmar, Poland, Qatar, Russian Federation, Ukraine, United Kingdom, United States

Abstaining: China, Ecuador, Malaysia, Oman, Thailand, United Arab Emirates

27. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had erred on a question of law relating to the provisions of the Charter of the United Nations, the Committee decided by a vote of 13 to none with 8 abstentions that there was not a substantial basis for the application on that ground. The voting was as follows:

Against: Australia, France, Ireland, Italy, Mozambique, Myanmar, Poland, Qatar, Russian Federation, Ukraine, United Kingdom, United Republic of Tanzania, United States

Abstaining: Botswana, China, Ecuador, Malaysia, Oman, Thailand, Tunisia, United Arab Emirates

28. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by a vote of 13 to none with 8 abstentions that there was not a substantial basis for the application on that ground. The voting was as follows:

Against: Australia, France, Ireland, Italy, Mozambique, Myanmar, Poland, Qatar, Russian Federation, Ukraine, United Kingdom, United Republic of Tanzania, United States

Abstaining: Botswana, China, Ecuador, Malaysia, Oman, Thailand, Tunisia, United Arab Emirates

29. In view of the Committee's negative response to the questions which had been put to it in the application of Mr. Bentaleb, the Committee decided that there was not a substantial basis for the application under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 539 delivered by the United Nations Administrative Tribunal in the case of Bentaleb against the Secretary-General of the United Nations.

30. On 20 December 1991, the Secretary of the Committee received an application from Mr. Araim requesting a review of Judgement No. 533 rendered

by the United Nations Administrative Tribunal on 28 October 1991 in the case of Araim against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 February 1992, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.222) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Tribunal (AT/DEC/533).

31. Written comments of the Respondent, submitted with respect to the application of Mr. Araim in accordance with paragraph 1 of article V of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.223.

32. The Committee considered the application of Mr. Araim at two closed meetings held on 1 and 2 April 1992.

33. After members of the Committee had presented their views on the application of Mr. Araim, they were invited to decide whether or not there was a substantial basis for the application in respect of the following two grounds set forth in article 11 of the statute of the United Nations Administrative Tribunal and referred to in the application:

1. Has the Tribunal failed to exercise jurisdiction vested in it?

2. Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

34. At the request of a member of the Committee, the decisions of the Committee with regard to these two questions were taken by a roll-call vote.

35. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided by a vote of 10 to 8 with 2 abstentions that there was not a substantial basis for the application on that ground. The voting was as follows:

In favour: Botswana, Malaysia, Mozambique, Myanmar, Thailand, Tunisia, United Arab Emirates, United Republic of Tanzania

Against: Australia, China, France, Italy, Poland, Qatar, Russian Federation, Ukraine, United Kingdom, United States

Abstaining: Ecuador, Oman

36. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by a vote of 17 to none with 3 abstentions that there was not a substantial basis for the application on that ground. The voting was as follows:

Against: Australia, Botswana, China, France, Italy, Mozambique, Myanmar, Oman, Poland, Qatar, Russian Federation, Tunisia, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States

Abstaining: Ecuador, Malaysia, Thailand

37. In view of the Committee's negative response to the questions which had been put to it in the application of Mr. Araim, the Committee decided that there was not a substantial basis for the application under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 533 delivered by the United Nations Administrative Tribunal in the case of Araim against the Secretary-General of the United Nations.

38. On 30 December 1991, the Secretary of the Committee received an application from Mr. Al-Atraqchi requesting a review of Judgement No. 538 rendered by the United Nations Administrative Tribunal on 1 November 1991 in the case of Al-Atraqchi against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 February 1992, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.224) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Tribunal (AT/DEC/538).

39. Written comments of the Respondent, submitted with respect to the application of Mr. Al-Atraqchi in accordance with paragraph 1 of article V of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.225.

40. The Committee considered the application of Mr. Al-Atraqchi at its closed meeting held on 1 April 1992.

41. After members of the Committee had presented their views on the application of Mr. Al-Atraqchi, they were invited to decide whether or not there was a substantial basis for the application in respect of the ground set forth in article 11 of the statute of the United Nations Administrative Tribunal and referred to in the application. This ground is as follows:

Has the Tribunal failed to exercise jurisdiction vested in it?

42. The decision of the Committee with regard to this question was taken by vote.

43. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction

vested in it, the Committee decided by a vote of 17 to none with 2 abstentions that there was not a substantial basis for the application on that ground.

44. In view of the Committee's negative response to the question which had been put to it in the application of Mr. Al-Atraqchi, the Committee decided that there was not a substantial basis for the application under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 538 delivered by the United Nations Administrative Tribunal in the case of Al-Atraqchi against the Secretary-General of the United Nations.

45. On 6 January 1992, the Secretary of the Committee received an application from Mr. Ibarria requesting a review of Judgement No. 541 rendered by the United Nations Administrative Tribunal on 7 November 1991 in the case of Ibarria against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 February 1992, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.226) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Tribunal (AT/DEC/541).

46. Written comments of the Respondent, submitted with respect to the application of Mr. Ibarria in accordance with paragraph 1 of article V of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.227.

47. The Committee considered the application of Mr. Ibarria at its closed meeting held on 1 April 1992.

48. After members of the Committee had presented their views on the application of Mr. Ibarria, they were invited to decide whether or not there was a substantial basis for the application in respect of the following three grounds set forth in article 11 of the statute of the United Nations Administrative Tribunal and referred to in the application:

1. Has the Tribunal failed to exercise jurisdiction vested in it?

2. Has the Tribunal erred on a question of law relating to the provisions of the Charter of the United Nations?

3. Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

49. The decisions of the Committee with regard to these three questions were taken by vote.

50. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided by a vote of 18 to none with 2 abstentions that there was not a substantial basis for the application on that ground.

51. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had erred on a question of law relating to the provisions of the Charter of the United Nations, the Committee decided by a vote of 18 to none with 2 abstentions that there was not a substantial basis for the application on that ground.

52. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by a vote of 18 to none with 2 abstentions that there was not a substantial basis for the application on that ground.

53. In view of the Committee's negative response to the questions which had been put to it in the application of Mr. Ibarria, the Committee decided that there was not a substantial basis for the application under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 541 delivered by the United Nations Administrative Tribunal in the case of Ibarria against the Secretary-General of the United Nations.

54. On 13 January 1992, the Secretary of the Committee received an application from Ms. Fallah requesting a review of Judgement No. 545 rendered by the United Nations Administrative Tribunal on 12 November 1991 in the case of Fallah against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 February 1992, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.228) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Tribunal (AT/DEC/545).

55. Written comments of the Respondent, submitted with respect to the application of Ms. Fallah in accordance with paragraph 1 of article V of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.229.

56. The Committee considered the application of Ms. Fallah at its closed meeting held on 1 April 1992.

57. After members of the Committee had presented their views on the application of Ms. Fallah, they were invited to decide whether or not there was a substantial basis for the application in respect of the following two

grounds set forth in article 11 of the statute of the United Nations Administrative Tribunal and referred to in the application:

1. Has the Tribunal failed to exercise jurisdiction vested in it?

2. Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

58. The decisions of the Committee with regard to these two questions were taken by vote.

59. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided by a vote of 19 to none with 2 abstentions that there was not a substantial basis for the application on that ground.

60. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided by a vote of 19 to none with 2 abstentions that there was not a substantial basis for the application on that ground.

61. In view of the Committee's negative response to the questions which had been put to it in the application of Ms. Fallah, the Committee decided that there was not a substantial basis for the application under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 545 delivered by the United Nations Administrative Tribunal in the case of Fallah against the Secretary-General of the United Nations.

62. In accordance with article VIII, paragraph 4, of the rules of procedure of the Committee, the decisions of the Committee with regard to the applications of Mr. Hallin, Mr. Salinas, Mr. Bentaleb, Mr. Araim, Mr. Al-Atraqchi, Mr. Ibarria and Ms. Fallah were formally announced by the Chairman at the meeting of the Committee, held in public on 9 April 1992. At that meeting statements were made by the representatives of Australia, Ecuador, France, Guinea, Ireland, Oman, Saudi Arabia, the United Arab Emirates, the United Kingdom, the United Republic of Tanzania and the United States. The verbatim record of the public meeting of the Committee is contained in document A/AC.86/XXXIX/PV.5.

III. OTHER MATTERS

63. On 2 April 1992, at a closed meeting, under the agenda item "Other matters", the attention of the Committee was drawn to the information concerning the cases of Mr. Upadhya (Application No. 71) and Mr. Kioko contained in paragraphs 37 and 38-41 respectively of the information circular prepared for the thirty-ninth session of the Committee (A/AC.86/INF/38). The Committee took note of that information.